

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

OHIO SECURITY INSURANCE
COMPANY, *et al.*,

Plaintiffs,

v.

HI-TECH AGGREGATE, LLC, *et al.*,

Defendants.

Case No. 2:23-cv-01094-JAD-NJK

Order

[Docket No. 69]

Pending before the Court is Plaintiffs' motion to reopen discovery due to changed scope of litigation following Defendant Hi-Tech Aggregate, LLC's ("Defendant") amended counterclaim. Docket No. 69. Defendant filed a response. Docket No. 74. Plaintiffs filed a reply. Docket No. 78. The motion is properly resolved without a hearing. *See* Local Rule 78-1.

I. Background

Plaintiffs brought this action against their insured, Defendants Hi-Tech Aggregate, LLC, and Pavestone, LLC, seeking declaratory relief in which Plaintiffs asked the Court to review four insurance policies to determine any obligations Plaintiffs have in regard to indemnifying Defendant for certain portions of two judgments in an underlying suit. Docket No. 69 at 2. On August 26, 2024, United States District Judge Jennifer A. Dorsey granted in part and denied in part Plaintiffs' motion for summary judgment and granted Defendant leave to amend its bad-faith and NRS 686A.310 claims. Docket No. 67 at 37. Defendant filed its amended counterclaim on August 30, 2024. Docket No. 68. Plaintiffs submit that the additional allegations in the amended counterclaim vastly expanded the scope of this litigation and, therefore, discovery is now needed to investigate and address these new allegations which, Plaintiffs submit, were not part of the scope of the litigation during the original discovery period. Docket No. 69 at 4.

1 II. Motion to Reopen Discovery

2 A request to reopen discovery must be supported by a showing of good cause and excusable
 3 neglect. Local Rule 26-3; Fed. R. Civ. P. 6(b)(1)(B). The good cause analysis turns on whether
 4 the subject deadlines cannot reasonably be met despite the exercise of diligence. *Johnson v.*
 5 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). The showing of diligence is
 6 measured by the movant's conduct throughout the entire period of time already allowed.
 7 *CC.Mexicano.US, LLC v. Aero II Aviation, Inc.*, 2015 U.S. Dist. LEXIS 169110, at *11-12, 2015
 8 WL 10059063 (D. Nev. Dec. 15, 2015). If that party was not diligent, the inquiry should end.
 9 *Johnson*, 975 F.2d at 609.

10 When a request for relief from case management deadlines is made after the deadline has
 11 expired, an additional showing of excusable neglect must be made. *Branch Banking & Trust Co.*
 12 *v. DMSI, LLC*, 871 F.3d 751, 764-65 (9th Cir. 2017); *see also* Local Rule 26-3. The excusable
 13 neglect "determination is at bottom an equitable one, taking account of all relevant circumstances
 14 surrounding the party's omission." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507
 15 U.S. 380, 395 (1993). Factors courts may consider when evaluating excusable neglect include (1)
 16 the danger of prejudice to the non-moving party, (2) the length of the delay and its potential impact
 17 on judicial proceedings, (3) the reason for the delay and, (4) whether the movant acted in good
 18 faith. *Id.*

19 The movant bears the burden of establishing sufficient justification for modification of the
 20 case management deadlines. *See Desio v. State Farm Mut. Auto. Ins. Co.*, 339 F.R.D 632, 638 (D.
 21 Nev. 2021) (citing *Singer v. Las Vegas Athl. Clubs*, 376 F. Supp. 3d 1062, 1077 (D. Nev. 2019));
 22 *see also Branch Banking*, 871 F.3d at 765 (affirming denial of request to modify case management
 23 deadlines because the movants had not established good cause or excusable neglect). Magistrate
 24 judges have broad discretion to manage the discovery process "in the interests of dispatch and
 25 fairness." *V5 Techs. v. Switch, Ltd.*, 332 F.R.D. 356, 361 (D. Nev. 2019); *see also Hallett v.*
 26 *Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

27 Here, Plaintiffs have not demonstrated diligence. *See* Docket No. 69 at 5. The Court issued
 28 a scheduling order on October 10, 2023, Docket No. 12, and extended the discovery period twice.

1 Docket Nos. 43, 49. Discovery closed on August 12, 2024. Docket No. 49 at 7. Plaintiffs have,
2 as a result, had a 307-day discovery period. Plaintiffs submit that, prior to August 30, 2024, the
3 case was about coverage under four policies for two judgments and claims arising from the
4 issuance of three letters. Docket No. 69 at 7. Plaintiffs further submit that the entirety of the
5 case and all the claims pled within it arose out of those writings, all which speak for themselves
6 and, therefore, no discovery was needed during the original discovery period. *Id.* However, after
7 the Court denied Plaintiffs' request for a stay of discovery, Docket No. 39, and granted
8 Defendant leave to amend to file compulsory counterclaims, Docket No. 40, even if Plaintiffs
9 believed that discovery was not necessary, they were aware that discovery must proceed
10 further, especially considering Defendant's upcoming counterclaim. The Court told the
11 parties they must diligently conduct discovery. Docket No. 43 at 1. Following Defendant's
12 initial counterclaim, however, Plaintiffs still chose to conduct zero discovery.

13 Plaintiffs also submit that good cause exists as the amended counterclaim contains a vastly
14 expanded scope of factual allegations. Docket No. 69 at 7. However, contrary to Plaintiffs'
15 assertion that "this is a completely different case now," *see* Docket No. 69 at 7, the scope of
16 litigation remains the same. Both the initial counterclaim and amended counterclaim contain
17 claims for breach of contract, Docket No. 41 at 11-12; Docket No. at 68 11-12, breach of the duty
18 of good faith and fair dealing, Docket No. 41 at 12-13; Docket No. 68 at 12-14, and breach of
19 Nevada statutory duties, Docket No. 41 at 15-16; Docket No. 41 at 13. No explanation has been
20 provided as to why Plaintiffs did not conduct discovery on these issues, as they were clearly part
21 of the litigation during the discovery period. Further, Plaintiffs are already in possession of the
22 discovery underlying the facts in the amended counterclaim, as the amended allegations were
23 based on information provided by Plaintiffs during discovery. Docket No. 74 at 3-4. Therefore,
24 the Court cannot find diligence.¹

25
26 ¹ Additionally, a request to extend discovery deadlines must include a specific description
27 of the discovery that remains. Local Rule 26-3. Here, Plaintiffs submit that the discovery that
28 remains to be completed includes written discovery to Defendant, depositions of Defendant,
designation of expert witnesses, and potential depositions of expert witnesses. Docket No. 69 at
5-6. Such a generalized statement does not meet the requirements as set out by the Local Rules.

1 Since Plaintiffs have failed to demonstrate diligence, the Court cannot find good cause to
2 grant the request.²

3 Accordingly, Plaintiffs' motion to reopen discovery is **DENIED**. Docket No. 69.

4 IT IS SO ORDERED.

5 Dated: October 23, 2024

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Nancy J. Koppe
United States Magistrate Judge

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² As the Court finds that Plaintiffs have not shown good cause, it need not reach the issue
of excusable neglect.